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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re

Case No. 20-30819-DM

BENJA INCORPORATED,

Chapter 7

Debtor.

DECLARATION OF KYLE EVERETT IN SUPPORT OF CHAPTER 7 TRUSTEE'S MOTION FOR ENTRY OF ORDER PURSUANT TO ECF 150 (PETERS COMPROMISE ORDER)

[No Hearing Unless Requested; Notice and Opportunity for Hearing Filed Pursuant to B.L.R. 9014-1(b)(3)]

I, Kyle Everett, declare as follows:

1. I am the duly appointed Chapter 7 Trustee of the bankruptcy estate (the "Estate") of Benja Incorporated (the "Debtor") in the above-captioned case (the "Bankruptcy Case"). I was appointed as the Chapter 11 Trustee in the Bankruptcy Case on or about November 3, 2020. On or about January 29, 2021, the Bankruptcy Case was converted to Chapter 7 and I was appointed as Chapter 7 Trustee (the "Trustee"). All statements in this declaration are based on my own personal knowledge and observation, or upon information and belief based upon my

EVERETT DECLARATION ISO MOTION FOR ENTRY OF COMFORT ORDER

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1 review of the court and business records in this case. If called to testify on this matter, I could
2 and would competently testify to the matters set forth in this Declaration.

3 2. I make this Declaration in support of the concurrently filed Motion for Entry of
4 Order Pursuant to ECF 150 (Peters Compromise Order). The Peters Compromise Order is
5 defined in this Declaration as the “Order”.

6 3. Under the Order, Mr. Peters was required to pay \$160,000 in exchange for the
7 Estate’s release of claims against him, payable in two installments of \$15,000 each and a balloon
8 payment of \$130,000. Mr. Peters made the first two \$15,000 payments totaling \$30,000. The
9 final payment of \$130,000 was due on July 31, 2024. Mr. Peters failed to make the final payment.

10 4. I am informed and believe that my counsel notified Mr. Peters of his default,
11 pursuant to the terms of the settlement agreement and Order.

12 5. Mr. Peters did not cure the default.

13 6. I was prepared to proceed with obtaining a judgment against Mr. Peters in the sum
14 of \$250,000, less the \$30,000 Mr. Peters had paid. While in the process of moving forward with
15 seeking entry of judgment, I am informed and believe that Mr. Peters’ former counsel contacted
16 my counsel, stating that Mr. Peters had no money, and explaining that he had even drained his
17 retirement accounts to pay tax debt. I am informed and believe that Mr. Peters’ former counsel
18 further stated that Mr. Peters did not want a judgment against him, and was willing to borrow
19 \$50,000 to pay the estate if that would satisfy Mr. Peters’ obligation under the Order.

20 7. Based on the information provided by Mr. Peters, I had two choices: obtain a
21 judgment of \$220,000 against Mr. Peters, which I am informed and believe would likely be
22 uncollectible, or take \$50,000 in satisfaction of the remaining \$130,000 owing under the
23 settlement agreement. Mr. Peters has since paid the estate the full \$50,000 he offered.

24 8. I believe in my reasonable business judgment that accepting \$50,000 from Mr.
25 Peters in satisfaction of the \$130,000 owed by Mr. Peters maximizes the return to the Estate, by
26 increasing the amount of the estate by \$50,000 and by avoiding the incurrence of legal fees to
27 obtain and attempt to collect an apparently uncollectible judgment.

1 I declare under penalty of perjury under the laws of the United States, that the foregoing
2 is true and correct. Executed in San Francisco County, California on October 2, 2024.
3

4 *Kyle Everett*
5 _____
6 Kyle Everett, in my Capacity as Chapter 7
7 Trustee of the Benja Incorporated Bankruptcy
8 Estate
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